

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
DAVID JONES,

Petitioner,

-v-

J.M. KILLIAN, Warden FCI,

Respondent.

JED S. RAKOFF, U.S.D.J.

:
:
:
:
:
:

09 Civ. 3115 (JSR)

ORDER

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8-25-10

On May 13, 2010, the Honorable Henry Pitman, United States Magistrate Judge, issued a Report and Recommendation in the above-captioned matter recommending the dismissal as moot of petitioner's petition filed pursuant to 28 U.S.C. § 2241.

Petitioner has failed to file any objection to the Report and Recommendation, and, for that reason alone, has waived any right to review by this Court. See Thomas v. Arn, 474 U.S. 140, 147-48 (1985); Mario v. P & C Food Markets, Inc., 313 F.3d 758, 766 (2d Cir. 2002); Spence v. Superintendent, Great Meadow Corr. Facility, 219 F.3d 162, 174 (2d Cir. 2000). Accordingly, the Court hereby adopts the Report and Recommendation, and, for the reasons therein, dismisses the petition with prejudice. In addition, because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253. Moreover, the Court certifies that any appeal from this Order would not be taken in good faith, as petitioner's claim lacks any arguable basis in law or fact, and therefore permission to proceed in forma pauperis is also denied. See 28 U.S.C. § 1915(a)(3); see also Seimon v.

Emigrant Savs. Bank (In re Seimon), 421 F.3d 167, 169 (2d Cir. 2005).

The Clerk of the Court is directed to enter final judgment.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
August 25, 2010